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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 LUCY WHITE, ) NO. CV 06-03045 SS  
12 Plaintiff, )  
13 v. ) MEMORANDUM DECISION AND ORDER  
14 MICHAEL J. ASTRUE, )  
15 Commissioner of the Social )  
16 Security Administration, )  
17 Defendant. )  
18

19  
20 INTRODUCTION  
21

22 Plaintiff Lucy White ("Plaintiff") is seeking to overturn the  
23 decision of the Commissioner of the Social Security Administration<sup>1</sup>  
24 (hereinafter the "Commissioner" or the "Agency") denying her  
25 application for Disability Insurance Benefits. Alternatively, she  
26 asks for a remand. The parties have consented, pursuant to 28

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26 <sup>1</sup> Michael J. Astrue has become the Commissioner of Social  
27 Security Administration. Pursuant to Rule 25(d)(1) of the Federal  
28 Rules of Civil Procedure, he is substituted for Commissioner Jo  
Anne B. Barnhart as the defendant in this suit. F.R.C.P. 25(d)(1).  
The instant action survives "notwithstanding any change in the  
person occupying the office of Commissioner of Social Security[.]"  
42 U.S.C. § 405(g).

1 U.S.C. § 636(c), to the jurisdiction of the undersigned United  
2 States Magistrate Judge. Pursuant to the Court's Case Management  
3 Order, the parties filed a joint stipulation ("Jt. Stip.") on April  
4 17, 2007. For the reasons stated below, the decision of the  
5 Commissioner is AFFIRMED.

6  
7 **PROCEDURAL HISTORY**  
8

9 On January 20, 2001, Plaintiff filed an application for  
10 Disability Insurance Benefits ("DIB"). (Administrative Record "AR"  
11 45). Plaintiff alleged that she became disabled on February 24,  
12 1999 due to a work-related injury that caused severe back pain.  
13 (AR 64).  
14

15 After Plaintiff's claims were denied initially and on  
16 reconsideration, she requested a hearing before an administrative  
17 law judge ("ALJ"). (See AR 220). On May 1, 2002, ALJ Samuel W.  
18 Warner held an administrative hearing. (AR 220, 235). Plaintiff  
19 appeared with counsel and testified. (AR 288). The ALJ also heard  
20 testimony from vocational expert ("VE") Marjorie Golter. (AR 311).  
21 On July 26, 2002, the ALJ issued a decision denying benefits. (AR  
22 220-26). Plaintiff sought review before the Appeals Council, which  
23 remanded the matter to the ALJ on February 28, 2003. (AR 235-37).  
24 The Appeals Council instructed the ALJ to give further  
25 consideration to the treating source opinions, give further  
26 consideration to the claimant's maximum residual functional  
27 capacity, and obtain supplemental evidence. (AR 236).  
28

1 ALJ Warner held another hearing on April 28, 2003. (AR 317).  
2 Plaintiff appeared with counsel and testified. (AR 317, 320). The  
3 ALJ also heard testimony from VE Heidi Paul. (AR 334). On May 23,  
4 2003, the ALJ issued a decision denying benefits. (AR 19-26).  
5 Plaintiff sought review before the Appeals Council, which denied  
6 her request for review on March 10, 2006, making ALJ Warner's May  
7 23, 2003 decision the final decision of the Agency. (AR 8-10).  
8 Plaintiff filed the instant action on May 17, 2006.

#### 9 10 **FACTUAL BACKGROUND**

11  
12 Plaintiff was born on March 18, 1950, and was fifty-three  
13 years old at the time of the 2003 hearing. (See AR 19, 45).  
14 Plaintiff lives with her husband. (AR 307). She has a twelfth-  
15 grade education. (AR 68, 290). Plaintiff's past relevant work  
16 includes employment as a cashier and a housekeeper. (AR 65, 293).

#### 17 18 **A. Relevant Medical History**

19  
20 Plaintiff reports that she suffered a work-related back injury  
21 in February 1999. (AR 292). After her injury, she received  
22 treatment from Dr. Yoshida which consisted of prescribing anti-  
23 inflammatory, analgesic, and muscle relaxant medication. (AR 138).  
24 Plaintiff also received physical therapy. (Id.). Dr. Yoshida  
25 recommended epidural injections but Plaintiff declined. (Id.).  
26

27 In April 1999, Dr. Philip Sobol conducted an initial  
28 orthopedic evaluation. (AR 133-42). He determined that Plaintiff

1 had lumbar paraspinal tenderness, spasms, and limited lumbar  
2 motion. (AR 141). He diagnosed Plaintiff with lumbar  
3 musculoligamentous sprain/strain with left lower extremity  
4 radiculopathy and multilevel lumbar disc degeneration and mild  
5 bulging, per MRI study. (AR 137). He treated Plaintiff with more  
6 physical therapy and provided her with a home electrical muscle  
7 stimulation unit for symptomatic relief. (AR 138). He also  
8 prescribed anti-inflammatory medication and a muscle relaxant.  
9 (Id.). Dr. Sobol believed that it was premature to consider  
10 epidural injections. (Id.).  
11

12 Dr. Sobol continued to treat Plaintiff until January 2000.  
13 (AR 108). His final report noted that Plaintiff continued to  
14 suffer from pain but that any further treatment would not lead to  
15 additional improvement. (AR 116). Dr. Sobol concluded that  
16 Plaintiff had reached maximum improvement and that she would be  
17 permanently restricted from heavy work, prolonged standing, and  
18 prolonged sitting. (AR 116-17).<sup>2</sup>  
19

20 Medical records from MediPlus dated May 15, 2000 through  
21 August 21, 2000 indicate that the claimant was treated for low back  
22 pain, insomnia anxiety, depression, and hypertension. (AR 146-65).  
23 Plaintiff was treated with various medications. (Id.).  
24  
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27 <sup>2</sup> The Court notes that Plaintiff filed a Worker's Compensation  
28 claim and received a \$24,000 settlement. (AR 321).

1 On March 5, 2001, Dr. Jerrold M. Sherman conducted and  
2 Orthopedic Examination and Evaluation. (AR 166-68). Dr. Sherman  
3 concluded that "[Plaintiff's] subjective complaints are not  
4 consistent with the examination and x-rays taken today. From an  
5 orthopedic point of view, [Plaintiff] has no demonstrable  
6 restrictions regarding activities as would be appropriate for a  
7 woman her age and body habitus." (AR 168). Dr. Sherman also  
8 opined that Plaintiff is able to stand and walk for four hours in  
9 the course of an eight hour day, lift ten pounds frequently, and  
10 lift twenty pounds occasionally. (Id.).

11  
12 Plaintiff provided medical records from her treating  
13 physician, Dr. Robert Washington. (AR 184-216, 268-78). Dr.  
14 Washington indicated that Plaintiff suffered from chronic pain,  
15 osteoarthritis, obesity, hypertension, an anxiety disorder, and had  
16 previously suffered a stroke. (AR 184, 274). He opined that  
17 Plaintiff had marked limitations in her ability to understand and  
18 remember detailed instructions, maintain attention and  
19 concentration for extended periods of time, perform activities  
20 within a schedule, sustain an ordinary routine without supervision,  
21 complete a normal workweek, and travel to unfamiliar places. (AR  
22 187-89). He also reported that Plaintiff had several moderate and  
23 mild functional limitations. (Id.).

24  
25 **B. Psychiatric Evaluation**

26  
27 In January 2004, Dr. Peter J. Weingold conducted a psychiatric  
28 evaluation of Plaintiff. (AR 253-54). Dr. Weingold proceeded to

1 treat Plaintiff on a monthly basis for nine months. (AR 256). He  
2 completed a Psychiatric/Psychological Impairment Questionnaire.  
3 (AR 256-63). Dr. Weingold diagnosed Plaintiff with depression.  
4 (AR 254, 256). Dr. Weingold found that Plaintiff had no marked  
5 functional limitations. (AR 259-61). He noted that Plaintiff had  
6 only moderate limitations in her ability to maintain concentration  
7 for long periods of time, perform activities within a schedule,  
8 complete a normal workweek, and interact appropriately with the  
9 public. (AR 259-60). Dr. Weingold opined that Plaintiff was able  
10 to tolerate low work stress. (AR 262).

#### 11 12 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

13  
14 To qualify for disability benefits, a claimant must  
15 demonstrate a medically determinable physical or mental impairment  
16 that prevents him from engaging in substantial gainful activity<sup>3</sup>  
17 and that is expected to result in death or to last for a continuous  
18 period of at least twelve months. Reddick v. Chater, 157 F.3d 715,  
19 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The  
20 impairment must render the claimant incapable of performing the  
21 work he previously performed and incapable of performing any other  
22 substantial gainful employment that exists in the national economy.  
23 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42  
24 U.S.C. § 423(d)(2)(A)).

25  
26  
27 <sup>3</sup>Substantial gainful activity means work that involves doing  
28 significant and productive physical or mental duties and is done  
for pay or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 To decide if a claimant is entitled to benefits, an ALJ  
2 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The  
3 steps are:

4  
5 (1) Is the claimant presently engaged in substantial  
6 gainful activity? If so, the claimant is found not  
7 disabled. If not, proceed to step two.

8 (2) Is the claimant's impairment severe? If not, the  
9 claimant is found not disabled. If so, proceed to  
10 step three.

11 (3) Does the claimant's impairment meet or equal one of  
12 list of specific impairments described in 20 C.F.R.  
13 Part 404, Subpart P, Appendix 1? If so, the  
14 claimant is found disabled. If not, proceed to  
15 step four.

16 (4) Is the claimant capable of performing his past  
17 work? If so, the claimant is found not disabled.  
18 If not, proceed to step five.

19 (5) Is the claimant able to do any other work? If not,  
20 the claimant is found disabled. If so, the  
21 claimant is found not disabled.

22  
23 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262  
24 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§  
25 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

26  
27 The claimant has the burden of proof at steps one through  
28 four, and the Commissioner has the burden of proof at step five.

1 Bustamante, 262 F.3d at 953-54. If, at step four, the claimant  
2 meets his burden of establishing an inability to perform past work,  
3 the Commissioner must show that the claimant can perform some other  
4 work that exists in "significant numbers" in the national economy,  
5 taking into account the claimant's residual functional capacity  
6 ("RFC"),<sup>4</sup> age, education, and work experience. Tackett, 180 F.3d  
7 at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§  
8 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so by the  
9 testimony of a vocational expert or by reference to the Medical-  
10 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
11 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel,  
12 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both  
13 exertional (strength-related) and nonexertional limitations, the  
14 Grids are inapplicable and the ALJ must take the testimony of a  
15 vocational expert. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir.  
16 2000).

#### 17 18 THE ALJ'S DECISION 19

20 ALJ Warner employed the five-step sequential evaluation  
21 process. At step one, the ALJ found that Plaintiff had not engaged  
22 in substantial gainful employment since her alleged onset date.  
23 (AR 20). At step two, the ALJ found that Plaintiff's chronic  
24 hypertension and chronic low back pain are severe impairments. (AR  
25

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26 <sup>4</sup> Residual functional capacity is "what [one] can still do  
27 despite [his] limitations" and represents an "assessment based upon  
28 all of the relevant evidence." 20 C.F.R. §§ 404.1545(a),  
416.945(a).



22). However, the ALJ determined that Plaintiff's "mental problems are minimal and non-severe." (Id.). At step three, the ALJ found that Plaintiff's impairments, either singly or in combination, did not meet or equal the requirements of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (Id.).

At step four, the ALJ held that Plaintiff had the RFC for light work activity. (AR 23). He determined that Plaintiff could lift and carry twenty pounds occasionally and ten pounds frequently; that she can stand, sit and walk for six hours out of an eight hour day; that she should only climb ladders, stoop or crouch occasionally; and that she should perform only simple, repetitive work in a low stress environment with no more than average production and pace requirements. (Id.). Based upon this assessment, the ALJ concluded that Plaintiff is unable to perform her past relevant work as a cashier. (Id.). However, at step five, the ALJ determined that Plaintiff could make "a successful adjustment to work that exists in significant numbers in the national economy." (AR 24). Accordingly, the ALJ found that Plaintiff was not disabled. (AR 25).

#### STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The court may set aside the Commissioner's decision when the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th

1 Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v. Chater,  
2 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen, 885 F.2d  
3 597, 601 (9th Cir. 1989)).

4  
5 "Substantial evidence is more than a scintilla, but less than  
6 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
7 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
8 evidence which a reasonable person might accept as adequate to  
9 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;  
10 Smolen, 80 F.3d at 1279). To determine whether substantial  
11 evidence supports a finding, the court must "'consider the record  
12 as a whole, weighing both evidence that supports and evidence that  
13 detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d  
14 at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
15 1993)). If the evidence can reasonably support either affirming or  
16 reversing that conclusion, the court may not substitute its  
17 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-21  
18 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

#### 20 DISCUSSION

21  
22 Plaintiff complains that the ALJ's decision should be  
23 overturned for several reasons. Plaintiff argues that the ALJ  
24 failed to give specific and legitimate reasons for rejecting the  
25 mental limitations assessed by treating physician, Dr. Robert  
26  
27  
28

1 Washington.<sup>5</sup> (Jt. Stip. at 5-8). Plaintiff also asserts that the  
2 ALJ failed to provide specific and legitimate reasons for rejecting  
3 Dr. Washington's assessment of Plaintiff's physical limitations.  
4 (Jt. Stip. at 13-14). Finally, Plaintiff complains that the ALJ  
5 failed to satisfy his burden at step five of the sequential  
6 analysis. (Jt. Stip. at 18-22). The Court disagrees with  
7 Plaintiff's contentions.

8  
9 **A. The ALJ Properly Considered The Treating Physician's Opinions**

10  
11 Plaintiff complains that the ALJ did not properly consider  
12 Dr. Washington's assessments of Plaintiff's physical and mental  
13 limitations. (Jt. Stip at 5-8, 13-14). The Court disagrees.

14  
15 Although the treating physician's opinion is entitled to great  
16 deference, it is "not necessarily conclusive as to either the  
17 physical condition or the ultimate issue of disability." Morgan v.  
18 Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999). If  
19 the treating doctor's opinion is not contradicted by another  
20 doctor, it may be rejected only for "clear and convincing" reasons  
21 supported by substantial evidence in the record. Lester v. Chater,  
22 81 F.3d 821, 830 (9th Cir. 1995) (citing Baxter v. Sullivan, 923

23  
24 <sup>5</sup> The Court notes that the subheading for the section that  
25 introduces the parties' arguments states that "Issue 1" is  
26 "[w]hether the ALJ provided clear and convincing reasons for  
27 rejecting the mental limitations assessed by Lucy White's treating  
28 physician, Robert Washington, M.D." (Jt. Stip. at 5). However,  
both the Plaintiff and Respondent framed the issue as whether the  
ALJ provided specific and legitimate reasons for rejecting the  
treating physician's opinion. (See Jt. Stip. at 5, 14).

1 F.2d 1391, 1396 (9th Cir. 1991)). Even when the treating doctor's  
2 opinion is contradicted by the opinion of another doctor, the ALJ  
3 may properly reject the treating doctor's opinion by providing  
4 "'specific and legitimate reasons' supported by substantial  
5 evidence in the record for so doing." Id. (citing Murray v.  
6 Heckler, 722 F.2d at 502). The ALJ can meet this burden by setting  
7 forth a detailed and thorough summary of the facts and conflicting  
8 clinical evidence. Magallanes v. Bowen, 881 F.2d 747, 751 (9th  
9 Cir. 1989).

10  
11 Where the opinion of the claimant's treating physician is  
12 contradicted, and the opinion of a nontreating source is based on  
13 independent clinical findings that differ from those of the  
14 treating physician, the opinion of the nontreating source may  
15 itself be substantial evidence. Andrews v. Shalala, 53 F.3d 1035,  
16 1041 (9th Cir. 1995). "It is then solely the province of the ALJ  
17 to resolve the conflict." Id. When presented with conflicting  
18 medical opinions, the ALJ must determine credibility and resolve  
19 the conflict. Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190,  
20 1195 (9th Cir. 2004) (citing Matney).

## 21 22 **1. Mental Impairments**

23  
24 Plaintiff argues that the ALJ did not provide specific and  
25 legitimate reasons for rejecting Dr. Washington's assessment of  
26 Plaintiff's mental impairments. (Jt. Stip. at 5-8). The ALJ  
27 rejected Dr. Washington's assessment of Plaintiff's mental  
28 impairments because he had "few objective findings to support his

1 conclusions" and "the alleged mental problems were outside of his  
2 field of expertise." (AR 22). The Court concludes that the ALJ  
3 properly considered Dr. Washington's assessment of Plaintiff's  
4 mental impairments.

5  
6 Dr. Washington's assessment of Plaintiff's mental impairments  
7 was conclusory and unsupported by objective medical findings. (See  
8 AR 184-200). Although Dr. Washington found that Plaintiff had  
9 several marked functional limitations due to her mental  
10 impairments, he did not indicate whether he conducted any  
11 psychological assessment or testing to reach his conclusion. (See  
12 AR 185 (noting that the only "laboratory and diagnostic test"  
13 conducted was an MRI of the spine); see also AR 198 (noting that  
14 his assessment is based on "conversations with [Plaintiff] and how  
15 she seems to handle stress/pain")). An ALJ need not accept any  
16 opinion, even a treating physician's, if that opinion is brief,  
17 conclusory, and inadequately supported by clinical findings. See  
18 Batson, 359 F.3d at 1195 (rejecting a treating physician's opinion,  
19 in part, because it was "conclusory in the form of a check list"  
20 and "lack[ed] substantive medical findings to support [the]  
21 conclusion."); Tonapetyan v. Comm'r of Soc. Sec., 242 F.3d 1144,  
22 1149 (9th Cir. 2001) (an ALJ may discredit treating physicians'  
23 opinions that are conclusory, brief, and unsupported by the record  
24 as a whole). As such, the ALJ's finding that Dr. Washington's  
25 assessment of Plaintiff's mental impairments was unsupported by  
26 objective medical findings was a proper basis upon which to reject  
27 Dr. Washington's opinion.

1           Moreover, Dr. Washington's opinion was subsequently  
2 contradicted by the assessment of a psychiatrist, Dr. Weingold.  
3 Dr. Weingold noted that Plaintiff had no marked functional  
4 limitations and moderate limitations in her ability to maintain  
5 concentration for long periods of time, perform activities within  
6 a schedule, complete a normal workweek, and interact appropriately  
7 with the public. (AR 259-60). Greater weight should be afforded  
8 to the opinion of Dr. Weingold, a psychiatrist and an expert in  
9 mental impairments, than to the opinion of Dr. Washington, an  
10 internist. 20 C.F.R. §404.1427(d)(5) ("We generally give more  
11 weight to the opinion of a specialist about medical issues related  
12 to his or her area of specialty than to the opinion of a source who  
13 is not a specialist."); see also Holohan v. Massanari, 246 F.3d  
14 1195, 1202, 1203 n.2 (9th Cir. 2001) (noting that the opinions of  
15 specialist concerning matters relating to their specialty are given  
16 greater weight than that of nonspecialist).

17  
18           Even if the ALJ had erred in considering Dr. Washington's  
19 assessment of Plaintiff's mental impairments, any error was  
20 harmless. See Curry v. Sullivan, 925 F.2d 1127, 1129 (9th Cir.  
21 1990) (harmless error rule applies to review of administrative  
22 decisions regarding disability); Booz v. Sec'y of Health and Human  
23 Servs., 734 F.2d 1378, 1380-81 (9th Cir. 1984) (same). Dr.  
24 Washington's opinion was based solely on the complaints relayed by  
25 Plaintiff. (See AR 184, 198). The ALJ found that Plaintiff  
26 exaggerated her limitations and found that her testimony could not  
27 be fully credited. (AR 22). As such, any assessment based solely  
28 on her subjective complaints would also not be reliable.

1 In sum, the ALJ properly rejected Dr. Washington's opinions  
2 regarding Plaintiff's mental impairments. Even if there was  
3 error, it was harmless. Accordingly, Plaintiff's claim does not  
4 warrant remand.

## 5 6 **2. Physical Impairments**

7  
8 Plaintiff asserts that the ALJ improperly rejected Dr.  
9 Washington's opinion regarding Plaintiff's physical impairments.  
10 (Jt. Stip. at 13). Specifically, Plaintiff complains that the ALJ  
11 rejected the Multiple Impairment Questionnaire completed by Dr.  
12 Washington. (Id.). The Court concludes that the ALJ's  
13 consideration of Dr. Washington's opinion regarding Plaintiff's  
14 physical impairments does not warrant remand.

15  
16 Dr. Washington opined that Plaintiff's physical impairments  
17 allowed her to sit for three hours, stand or walk for one hour,  
18 occasionally lift as much as fifty pounds, and occasionally carry  
19 as much as twenty pounds. (AR 195-96). Dr. Washington's opinion  
20 is contradicted by examining physician, Dr. Sherman (see AR 166-  
21 68), and non-examining physician, Dr. Huskey. (See AR 169-76).  
22 Both Dr. Sherman and Dr. Huskey found that Plaintiff can lift ten  
23 pounds frequently and twenty pounds occasionally. (AR 168, 170).  
24 Dr. Sherman determined that Plaintiff could stand and walk for four  
25 hours of an eight-hour day. (AR 168). Dr. Huskey assessed that  
26 Plaintiff could stand and walk for six hours of an eight-hour day.  
27 (AR 170). Both Dr. Sherman and Dr. Huskey believed that  
28 Plaintiff's pain complaints were not consistent with objective

1 medical findings. (AR 168, 174). As Dr. Washington's opinion was  
2 contradicted by examining and non-examining physicians, the ALJ  
3 need only provide specific and legitimate reasons for rejecting Dr.  
4 Washington's opinion. Lester, 81 F.3d at 830 (citation omitted).  
5

6 The ALJ rejected Dr. Washington's Multiple Impairment  
7 Questionnaire because it was not supported by objective findings or  
8 testing. (AR 23). The only objective testing Dr. Washington  
9 conducted was an MRI which revealed disc degeneration<sup>6</sup> in the  
10 lumbar spine. (See AR 183A, 194). However, the MRI did not reveal  
11 any stenosis<sup>7</sup> or nerve root compression.<sup>8</sup> (AR 183A). As such, the  
12 ALJ reasoned that the objective findings from the MRI were not  
13 consistent with Dr. Washington's assessment of Plaintiff's physical  
14 functional limitations.

15 \\  
16

17 Even if the ALJ erred in rejecting Dr. Washington's opinion  
18 regarding Plaintiff's physical functional limitations, any error

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19 <sup>6</sup> Degenerative disc disease is not really a disease but a term  
20 used to describe the normal changes in your spinal discs as you  
21 age. WebMd, Degenerative Disc Disease - Topic Overview,  
22 <http://webmd.com/back-pain/tc/Degenerative-Disc-Disease-Topic-Overview>.

23 <sup>7</sup> Stenosis is the narrowing of spaces in the spine which  
24 causes pressure on the spinal cord and/or nerves. WebMd, Back Pain  
25 Guide, <http://www.webmd.com/back-pain/guide/spinal-stenosis>.

26 <sup>8</sup> Nerve roots are nerves that branch off the spinal cord and  
27 are responsible for sending signals to and from the muscles and  
28 other structures throughout the body. Compression or inflammation  
of the nerve roots can cause symptoms of pain, altered reflexes,  
decreased strength, and decreased sensation. WebMd, Cauda Equina  
Syndrome, <http://www.webmd.com/a-to-z-guides/cauda-equina-syndrome>.



1 was harmless. See Curry, 925 F.2d at 1129; Booz, 734 F.2d at 1380-  
2 81. Substantial evidence in the records support's the ALJ's  
3 assessment of Plaintiff's physical functional limitations. Dr.  
4 Sherman and Dr. Huskey made very similar determinations regarding  
5 Plaintiff's exertional limitations. (See AR 168, 170). They both  
6 found that Plaintiff could lift ten pounds frequently and twenty  
7 pounds occasionally. (AR 168, 170). They differed only slightly  
8 about the amount of time that Plaintiff could stand and walk in an  
9 eight-hour work day. (AR 168 (Dr. Sherman determined that  
10 Plaintiff could stand and walk for four hours of an eight-hour  
11 day); AR 170 (Dr. Huskey assessed that Plaintiff could stand and  
12 walk for six hours of an eight-hour day)). Moreover, Dr. Sherman's  
13 assessment was based on objective medical findings. As such, the  
14 ALJ's RFC assessment is supported by substantial evidence in the  
15 record. Andrews, 53 F.3d at 1041 (noting that when the opinion of  
16 a nontreating source is based on independent clinical findings, the  
17 opinion of the nontreating source may itself be substantial  
18 evidence).

19  
20 Moreover, the ALJ determined that Plaintiff's testimony  
21 regarding her symptoms and limitations could not be fully credited.  
22 (AR 22). As it appears that Dr. Washington's assessment was based  
23 largely on Plaintiff's subjective complaints, his opinion is not  
24 reliable.

25  
26 Further, Dr. Washington's assessment is extremely conservative  
27 on one aspect of Plaintiff's physical limitations and extremely  
28 optimistic on another. Dr. Washington determined that Plaintiff

1 can lift up to fifty pounds and occasionally carry twenty pounds.  
2 (AR 196). This far exceeds the weight restrictions recommended by  
3 Drs. Sherman and Huskey. (See AR 168, 170). On the other hand,  
4 Dr. Washington's opinion that Plaintiff could only sit for three  
5 hours and stand and walk for one hour (AR 195), is far more  
6 conservative than the opinions of Drs. Sherman and Huskey. (See AR  
7 168, 170). As such, Dr. Washington's assessment of Plaintiff's  
8 physical limitations appears to be internally inconsistent.

9  
10 In sum, the ALJ gave a specific and legitimate reason for  
11 rejecting Dr. Washington's assessment of Plaintiff's physical  
12 functional limitations. To the extent that the ALJ may have erred,  
13 the error was harmless. Plaintiff is therefore not entitled to  
14 remand on this claim.

15  
16 **B. The ALJ Satisfied His Burden At Step Five Of The Five-Step**  
17 **Sequential Evaluation Process**

18  
19 Plaintiff complains that VE Heidi Paul erroneously determined  
20 that Plaintiff could perform the jobs of "dog bather" and  
21 "stitcher." (Jt. Stip. at 19). Plaintiff's claim is without  
22 merit.

23  
24 The ALJ found that Plaintiff had the RFC for light work  
25 activity. (AR 23). He determined that Plaintiff could lift and  
26 carry twenty pounds occasionally and ten pounds frequently; that  
27 she can stand, sit and walk for six hours out of an eight hour day;  
28 that she should only climb ladders, stoop or crouch occasionally;

1 and that she should perform only simple, repetitive work in a low  
2 stress environment with no more than average production and pace  
3 requirements. (Id.). The ALJ properly summarized and included all  
4 of Plaintiff's exertional and non-exertional limitations in her  
5 hypothetical to the vocational expert. (See AR 337-38).  
6

7 Plaintiff contends that the VE's identification of the dog  
8 bather and stitcher positions were inappropriate for Plaintiff.  
9 She argues that the General Educational Development ("GED")  
10 specifications of these positions in the Dictionary of Occupational  
11 Titles ("DOT") describes work that is not limited to simple  
12 instructions. (Jt. Stip. at 19). However, Plaintiff  
13 misinterpreted the RFC assessed by the ALJ. The ALJ limited  
14 Plaintiff to "simple, repetitive work," not work involving simple  
15 "instructions." (See AR 23).  
16

17 Moreover, the DOT describes the GED for a dog bather and a  
18 stitcher to be Level Three and Two respectively. DOT No. 690.685-  
19 494; DOT No. 418.677-010. Level Two requires that an employee  
20 apply "a commonsense understanding to carry out detailed but  
21 uninvolved written or oral instructions." DOT, Appendix C,  
22 Components of the Definition Trailer. Level Three requires the  
23 application of "a commonsense understanding to carry out  
24 instructions furnished in written, oral, or diagrammatic form."  
25 (Id.). As such, the DOT's description of each position does not  
26 indicate that the work involves complex instructions.  
27  
28

1 Plaintiff argues, tangentially, that the ALJ did not establish  
2 that a significant number of jobs that someone with Plaintiff's RFC  
3 could perform exist in the national and regional economy. (Jt.  
4 Stip. at 21). The VE testified that in the occupations of dog  
5 bather and stitcher, there were 476 jobs that existed in the local  
6 economy and 24,700 jobs in the national economy that Plaintiff  
7 could perform. (See AR 24, 338).<sup>9</sup> This number is large enough to  
8 support a finding that jobs for which Plaintiff is qualified exist  
9 in significant numbers. See Barker v. Sec'y of Health and Human  
10 Servs., 882 F.2d 1474, 1478-79 (9th Cir. 1989)(citing with approval  
11 decisions finding several hundred jobs "significant") (citations  
12 omitted).

13  
14 In sum, Plaintiff misconstrued the ALJ's RFC assessment.  
15 Plaintiff did not establish that there was a discrepancy between  
16 the ALJ's assessment of Plaintiff's RFC and the DOT's description  
17 of the jobs Plaintiff could perform. Further, the Commissioner met  
18 its burden of establishing that jobs exist in the national and  
19 regional economy that someone with Plaintiff's RFC could perform.  
20 Accordingly, Plaintiff's claim does not warrant remand.

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22 \\  
23

#### 24 CONCLUSION

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27 <sup>9</sup> The Court notes that the VE also testified that Plaintiff  
28 could work as a small product assembler and an inspector of  
electrical equipment. (AR 24, 339-44)

1 Consistent with the foregoing, IT IS ORDERED that Judgment be  
2 entered AFFIRMING the decision of the Commissioner and dismissing  
3 this action with prejudice. The Clerk of the Court shall serve  
4 copies of this Order and the Judgment on counsel for both parties.

5  
6 DATED: October 3, 2007

7 /S/

8  
9 SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE